

**DEPARTMENT OF STATE REVENUE**

**LETTER OF FINDINGS NUMBER: 99-0446**

**Gross and Adjusted Gross Income Tax  
Calendar Years ended 12/31/93, and 12/31/94**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUE(S)**

**I. Tax Administration – Penalty**

**Authority:** IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

**STATEMENT OF FACTS**

Taxpayer states that it was audited by the IRS and no penalty was assessed. Further it believes that a penalty on a procedural issue that does not impact overall tax paid is extremely punitive to a compliant taxpayer.

**I. Tax Administration – Penalty**

**DISCUSSION**

Taxpayer states the penalty was incorrectly assessed because an affiliate's gross income is being reduced by the same amount. To charge penalty on a procedural issue that does not impact overall tax paid is extremely punitive to a compliant taxpayer.

45 IAC 15-11-2(b) states, "Negligence, on behalf of the taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer."

Taxpayer failed to report approximately twenty-one percent (21%) and thirty-four percent (34%) of its gross income for calendar years 1993 and 1994, respectively, which consisted of gross income for sales made to affiliated members. Taxpayer also failed to include sales of promotional and non-food sales. The taxpayer has not provided reasonable cause to allow a penalty waiver.

**FINDING**

Taxpayer's protest is denied.